

Date: May 26, 2004 Planning Commission Meeting

Item No.

MILPITAS PLANNING COMMISSION AGENDA REPORT

Category: Public Hearings

Report Prepared by: Troy Fujimoto

Public Hearing: Yes: ☒ No: ☐

Notices Mailed On: 5/14/04 Published On: 5/13/04 Posted On: 5/14/04

TITLE: USE PERMIT AMENDMENT NO. UA2004-6

Proposal: Request to amend an existing use permit to allow outdoor cooking (barbecue) and add a deli service to an existing market.

Location: 74 Dempsey Road

APN: 088-04-001

RECOMMENDATION: Approve with Conditions

Applicant: Al-Khafaji Hassan, 74 Dempsey Road, Milpitas, CA 95035

Property Owner: Joseph Leung, Fiesta Plaza, P.O. Box 360694, Milpitas, CA 95036

Previous Action(s): "S" Zone approval and amendments and Use Permit

General Plan Designation: Retail Sub-Center

Present Zoning: Neighborhood Commercial with an "S" Zone Overlay (C1-S)

Existing Land Use: Market

Agenda Sent To: Applicant & Owner (as noted above)

Attachments: Plans

PJ#2321

BACKGROUND

The Fiesta Plaza shopping center was built in the 1960's. Unit 1, a 12,720 square foot building was approved in April 1962 and Unit 2, an 8,624 square foot building was approved in April 1964. Subsequent approvals have included landscape modifications, fencing, signage, roof top equipment and a new building entrance. Use permits at the site have included restaurants, a massage parlor and a different market. The Planning Commission approved this market in April 2003.

Site Description

The shopping center is located east of Interstate 680 on the east side of Dempsey Road, between Dempsey Way and Selwyn Drive. The shopping center consists of approximately 21,168 square feet of

leasable space. Tenants in the shopping center include retail uses, service businesses, and restaurants. The market currently occupies a 1,200 square foot tenant space.

Property to the south is zoned for high density residential uses, to the west is a Caltrans maintenance yard, commercial property and religious facilities. To the north is a hotel and other commercial uses. To the east is a vacant parcel and a Santa Clara Valley Water District channel runs through the site.

THE APPLICATION

The proposed project is requested pursuant to Milpitas Municipal Code Section 18.03-6 (Neighborhood Commercial, Conditional Uses, delicatessens) and Planning Commission Resolution 452 (Guidelines for outdoor cooking at restaurants, delicatessens, etc.). The applicant is requesting approval to add a delicatessen and outdoor cooking to an existing market, both new uses are conditionally allowed in the Neighborhood Commercial zoning district.

PROJECT DESCRIPTION

The market owner is requesting to add deli service to his existing restaurant. In addition he is proposing to have occasional outdoor cooking (barbecue) at the rear of the building. The outdoor cooking would occur in a home-type (consumer) barbecue cooking facility that could be purchased from any retail outlet location. The outdoor cooking would not occur on a continual basis, it would occur occasionally as needed to meet the demand of the customer. Due to concerns of the activity from neighboring views, the applicant is proposing to screen the barbecue and activities from view and separate this activity from other uses with a temporary/movable fence/screen.

Interior modifications include a deli case adjacent to the existing meat case that will create an “L” shaped counter/display area.

USE PERMIT FINDINGS

Any approval of a Use Permit or Use Permit Amendment requires that the Planning Commission make the following findings:

1. The proposed use is consistent with the Milpitas Zoning Ordinance.
2. The proposed use is consistent with the Milpitas General Plan.
3. The proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare.

The following sections explain how these findings can be made for the proposed project, as conditioned.

CONFORMANCE WITH THE ZONING ORDINANCE

The proposed addition of a delicatessen and outdoor cooking is consistent with the C1 zoning district for several reasons. The C1 district conditionally permits markets and delicatessens. Since the market already exists, it is a normal extension of the business to have a delicatessen inside the market similar to most modern supermarkets. Planning Commission Resolution No. 452 allows outdoor cooking for existing restaurants and for businesses that are not eating establishments (with the procurement of a use permit). The outdoor cooking has similarities with the market, as both involve the handling and sale of food, thus, both uses are compatible. In addition, since restaurants are conditionally allowed in the district and there are existing restaurants in the shopping center, the outdoor cooking is not incompatible to existing businesses.

Parking

The additional uses will not create an additional need for parking spaces, as they are not adding any additional square footage to the site, nor are they adding any seating.

CONFORMANCE WITH THE GENERAL PLAN

The project conforms to the General Plan in that the use directly relates to:

Implementing Policy 2.a-I-3, which encourages economic pursuits, which will strengthen and promote development through stability and balance,

Implementing Policy 2.a-I-5, which maintains policies that promote a strong economy, and

Implementing Policy 2.a-I-6, which endeavors to maintain a balanced economic base that can resist downturns in any one economic sector.

The proposed addition of a delicatessen and outdoor cooking to the market will allow new and additional services to the existing business, which in turn will provide additional services for the immediate neighborhood and larger community. This increase in potential patronizing of the business will help to bring increased vitality to that portion of the City.

VICINITY COMPATIBILITY**Odors**

The outdoor cooking (barbecue) will create odors, whether from smoke or aroma of the food. Because the barbecue facility is small in size and cooking will occur on an infrequent basis, it is not expected to have an effect on the surrounding neighborhood. In addition, the parcel adjacent to where the cooking will occur is currently vacant. This vacant lot will also serve as a buffer to adjacent uses. The nearest residences will be over 400 feet away from where the actual cooking will occur.

Aesthetics

While the applicant will be using a small facility, staff is concerned with having a cooking facility stored at the rear of a building. It does not appear to be a sanitary situation and the sight of the idle barbecue will not improve the aesthetics to the rear elevation of the retail strip center. Thus, to maintain the appearance of the rear of the center, **staff recommends**, the applicant move the barbecue into the tenant space when not in use and when in use, the applicant shall also use a solid metal screen (painted to match the building) that will block all views of the barbecue from the east and south viewpoints. The screen shall also be moved into the tenant space when not in use.

Neighborhood/Community Impact

The proposed addition of the deli service and outdoor cooking to the existing market, as conditioned, is expected to have a positive community impact by enhancing an existing use in the retail center. The additional uses will allow the market to better serve the neighborhood by providing a wider variety of products. The increase in customer activity will also help neighboring businesses in the retail center. The proposed project as conditioned, will not negatively impact the surrounding neighborhood.

RECOMMENDATION

Close the Public Hearing. Approve Use Permit Amendment No. UA2004-6 based on the Findings and Special Conditions of Approval listed below:

FINDINGS

1. The proposed project is categorically exempt from further environmental review pursuant to Class 1, Section 15301 (Existing Facilities) of the State CEQA Guidelines.
2. The proposed project, as conditioned, will not impact views and not degrade the aesthetics of the site as the applicant will be moving facilities out of view when not in use and will use screening when in use.
3. The proposed addition of deli service and outdoor cooking complies with the City's Zoning Ordinance and General Plan in terms of land use and development standards for Neighborhood Commercial zoning and provides an additional service to the surrounding neighborhood.
4. The proposed use, as conditioned, will not impact on-site parking because there is adequate parking for the additional uses and the outdoor cooking will not block any required parking for the center.

SPECIAL CONDITIONS FROM THE PLANNING DIVISION

1. This Use Permit Amendment No. UA2004-6 approval is for the addition of deli services and outdoor cooking as depicted on approved plans dated May 26, 2004, and as amended by the approved special conditions. Any addition of seating or change in nature of the operation shall require review and approval by the Planning Commission of an amendment to this Use Permit. Minor changes, as per Section 42 of the Milpitas Zoning Ordinance, to approved plans may be approved by the Planning Division staff. (P)
2. This use shall be conducted in compliance with all appropriate local, state and federal laws and regulations. (P)
3. The cooking apparatus shall meet the following guidelines (P):
 - a) Shall not block any required parking or entrance to buildings or business,
 - b) Shall not block any required path of travel to the primary entrance and any required exits from the building,
 - c) Shall not be located within 10 feet of any combustible walls, roofs, or other combustible materials and shall not be located under any overhang of a building,
 - d) Shall not be located on any public sidewalk or street,
 - e) Shall be contained within a secured area, and
 - f) Shall be constructed of concrete or approved non-combustible materials.
4. A portable fire extinguisher shall be located in close proximity to the cooking apparatus and all employees shall be trained on how to use said extinguisher. (P)
5. A trash receptacle shall be located in the general vicinity of the cooking apparatus. (P)
6. An approved non-combustible receptacle, for the sole purpose of placing the hot coals, shall be located in the general vicinity of the cooking apparatus. (P)
7. This approval does not include any signs. Any new signage shall adhere to the sign program for the Fiesta Plaza and shall be submitted and approved by the Planning Division. (P, old)

8. If at the time of application for building permit there is a project job account balance due to the City for recovery of fees, review of permits will not be initiated until the balance is paid in full. (P, old)
9. The trash and dumpster areas shall be maintained and kept clean by double-bagging all food garbage produced by the market and by frequent sweeping and disposal of any spilled solid waste. (P, old)
10. Prior to occupancy permit issuance, the applicant shall submit evidence to the City that the following minimum refuse and recycling services have been subscribed with BFI:
 - a) Increase existing 2-cyd bin recycling service frequency to two times per week.
 - b) Increase existing 3-cyd bin trash service frequency to two times per week.
 - c) Meat scraps must be disposed of in ties plastic bags; also ensure that liquid food grease is not disposed of in the solid waste bins.
 - d) Ensure that solid waste bins are placed in front of the low hanging wires. It is recommended that low hanging wires serving the building be raised to 17 feet minimum above the ground.After the applicant has started its business, the solid waste service shall be evaluated by BFI commercial representative to determine the adequacy of the service level. If it is found to be inadequate, the applicant shall increase the service to the level determined by the evaluation. For general information, contact BFI at (408) 432-1234. (E)
11. The applicant shall submit a Sewer Needs Questionnaire and/or Industrial Waste Questionnaire with the building permit application and pay the related fees prior to Building Permit issuance by the Building Division. Contact the Land Development Section at (408) 586-3329 to obtain the form(s). (E, old)
12. Six months from this date, the Planning Commission shall review the permit to ensure that the outdoor cooking arrangements are meeting the condition no's 3-6 of this approval. (P)
13. If at the time of application for a certificate of occupancy there is a project job account balance due to the City for recovery of review fees, a certificate of occupancy shall not be issued until the balance is paid in full. (P)

(P) = Planning Division

(P,old) & (E, old) = Carried over from the previous Use Permit approval

(E) = Engineering

MARKET
2 of 2
A-2
SHEET NO.

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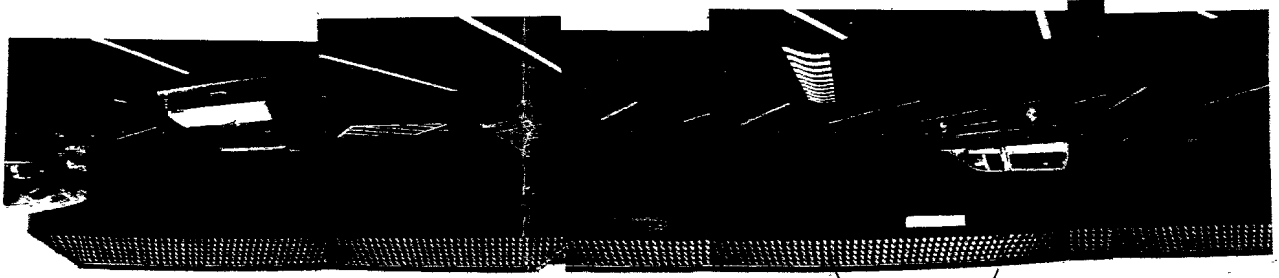
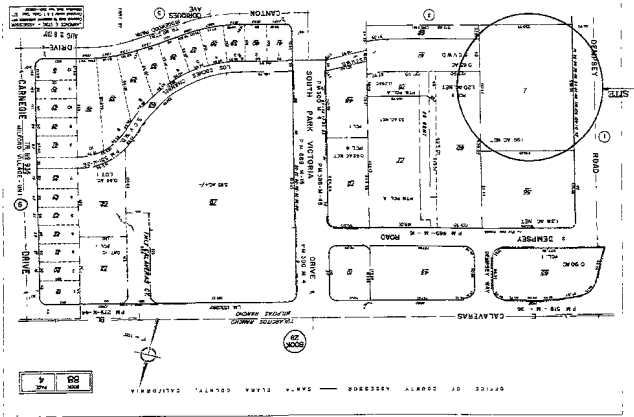
Milpitas Halal Market
MEAT & GROCERIES

REVISION 1
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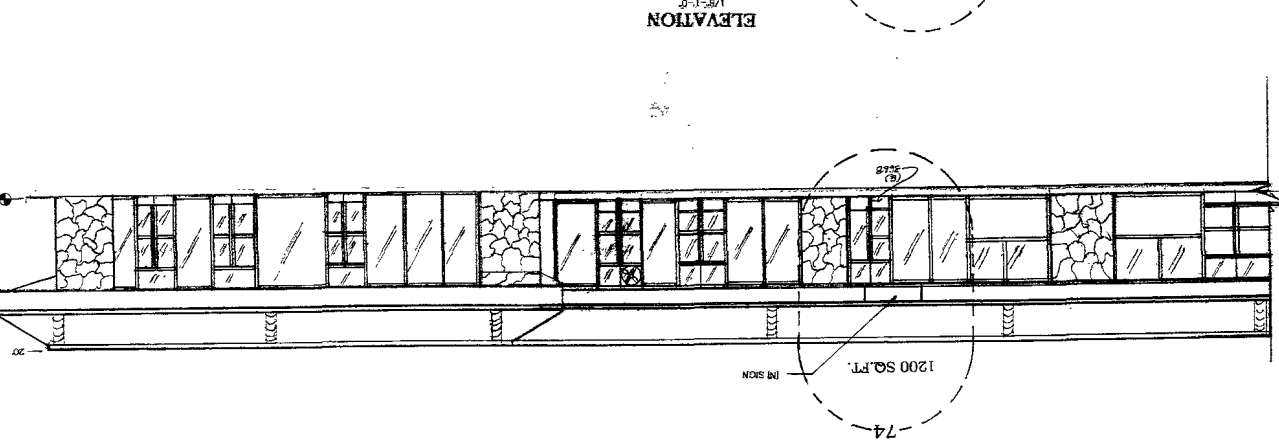
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WAHLER DESIGN GROUP LTD.
CUSTOM BUILDING & DEVELOPMENT
408 872-4411
San Jose, Ca. & Northern
AIA Assoc. MEMBER

THIS SHEET CONTAINS THE FOLLOWING:	NOTES
<input type="checkbox"/> FLOOR PLAN - LAYOUT <input type="checkbox"/> FLOOR PLAN - MEASUREMENTS <input type="checkbox"/> FLOOR PLAN - FINISHES <input type="checkbox"/> FLOOR PLAN - ELEVATIONS <input type="checkbox"/> FLOOR PLAN - DETAILS <input type="checkbox"/> FLOOR PLAN - OTHER DETAILS	<input type="checkbox"/> ROOM FINISH SCHEDULE <input type="checkbox"/> MECHANICAL SCHEDULE <input type="checkbox"/> ELECTRICAL SCHEDULE <input type="checkbox"/> PLUMBING SCHEDULE <input type="checkbox"/> OTHER SCHEDULES



ELEVATION



*3

NOTES

1. The building shall be constructed in accordance with the California Building Code (CBC) and all applicable local ordinances.

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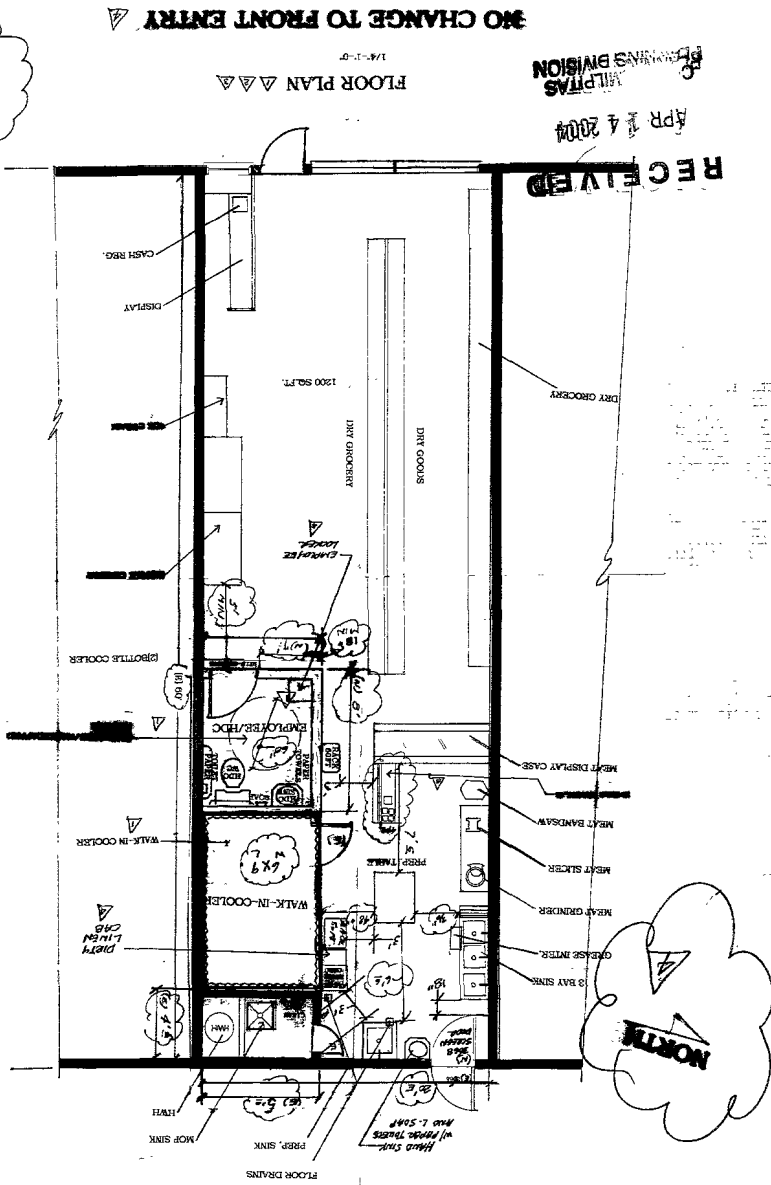
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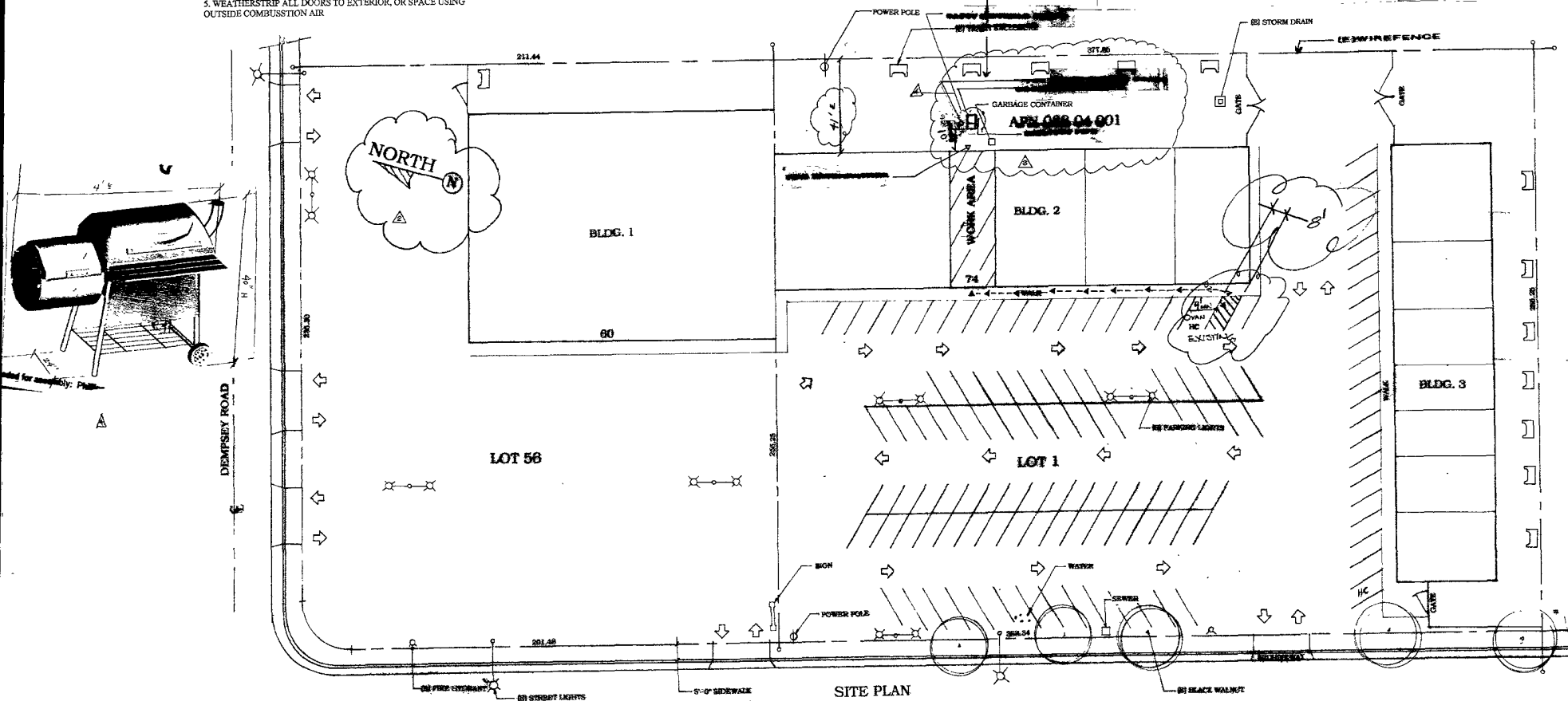
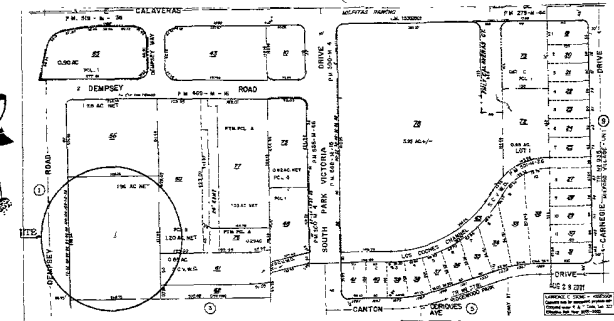
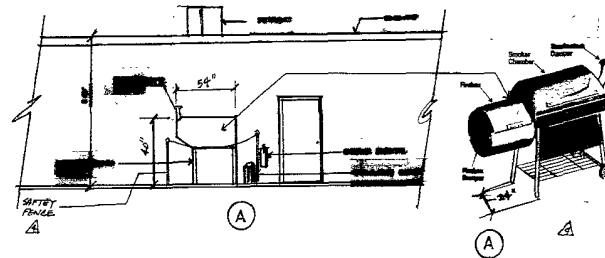
FLOOR PLAN

RECEIVED
APR 14 2004
MILPITAS
BUILDING DIVISION



SITE NOTES:

1. TRASH ENCLOSURE SHALL NOT BE LOCATED UNDER ELECTRICAL WIRES AND SHALL BE 25 FEET FROM STORM DRAIN.
2. PROVIDE A 36" LANDING EXTENDING OUT FROM THE BUILDING 1/4" BELOW TOP OF THRESHOLD, SLOPE 2% IN ANY DIRECTION.
3. ALL DOORS (INCLUDING DOOR TO WALK-IN-COOLER) SHALL BE OPERABLE FROM THE INSIDE WITHOUT THE USE OF A KEY, SPECIAL KNOWLEDGE OR EFFORT.
4. THE MAIN ENTRY DOOR(S) WILL BE MADE TO BE IN COMPLIANCE WITH ADA ACCESS REQUIREMENTS AS PART OF THIS WORK.
5. OPENING FORCE SHALL NOT EXCEED 51/2 POUNDS.
6. PROVIDE 10" SMOOTH SURFACE AT BOTTOM OF DOOR.
7. TOP OF THRESHOLD TO BE NO MORE THAN 1/4" ABOVE FLOOR AND/OR EXTERIOR LANDING.
8. EXIT DOOR(S) ARE TO BE OPENABLE FROM INSIDE WITHOUT THE USE OF A KEY, AND HARDWARE SHALL BE 34" TO 44" ABOVE THE FLOOR FOR PERSONS WHO PHYSICAL CHALLENGED.
9. WEATHERSTRIP ALL DOORS TO EXTERIOR, OR SPACE USING OUTSIDE COMBUSTION AIR.



SITE PLAN

DEMPSEY ROAD

SHEET 1 OF 2			
1. THIS SHEET CONTAINS THE FOLLOWING:	2. FLOOR PLAN - SPACE	3. EXTERIOR ELEVATIONS	4. STRUCTURAL DETAILS
5. FOUNDATION PLAN	6. ELEC. MECH. PLAN	7. GENERAL NOTES	8. ROOF PLAN
9. FLOOR PLAN - LAYOUT	10. STRUCTURAL PLAN	11. ROOM FINISH SCHEDULE	12. STRUCTURAL SECTIONS
			13. OTHER - AS NOTED

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 WRITTEN DIMENSIONS, CONTRACTOR SHALL VERIFY, AND BE RESPONSIBLE FOR, ALL DIMENSIONS AND CONDITIONS ON THE JOB AND THIS OFFICE MUST BE NOTIFIED OF ANY VARIATIONS FROM THE DIMENSIONS AND CONDITIONS SHOWN BY THESE DRAWINGS.

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Client: **Milpitas Hain Market**
MEAT & GROCERIES
 SHEET TITLE **SITE PLAN**

1 of 2
 1 of 2